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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,905	03/30/2001	Russell F. McKnight	2089	8934
24333	7590	07/26/2004	EXAMINER	
GATEWAY, INC. ATTN: SCOTT CHARLES RICHARDSON 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			BAUTISTA, XIOMARA L	
			ART UNIT	PAPER NUMBER
			2179	
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/821,905	<b>Applicant(s)</b> MCKNIGHT ET AL.	
	<b>Examiner</b> X L Bautista	<b>Art Unit</b> 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 7, 13, and 22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Specification***

2. The abstract of the disclosure is objected to because the abstract is missing some information somewhere among lines 4-7, or it is just missing a period between "pieces of media content" and "The system and", in line 6. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
4. Claims 1-6 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitation "analyzing said tagged piece" in line 8. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1, 2-4, 7-10, 13-23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts* (US 5,616,876) and the article entitled Jukeboxes, published by PC Magazine in 1999 (hereinafter PCMagazine).**

Claims 1, 7, 13 and 28:

Cluts discloses a system and method for selecting and playing audio selections (music) on the basis of subjective content (abstract; col. 1, lines 7-10). Cluts teaches user-defined classification and categorization of media content (col. 2, lines 30-48; col. 3, lines 1-36; col. 15, lines 47-55); receiving a criteria set of desired media content; analyzing a tagged piece of media content to determine if it is in accordance with the criteria set (col. 11, lines 34-48; col. 14, lines 4-11); and compiling a collection of media content based upon the user-defined classification and criteria set (col. 13, lines 63-67; col. 15, lines 14-31). Cluts explains that users may classify and search by style. Cluts teaches that media content is collected and presented to the user based upon a criteria set (col. 1,

lines 50-63; col. 2, lines 49-62; col. 3, lines 1-29; col. 13, lines 63-67; col. 15, lines 26-31, 47-55; col. 16, lines 54-62; col. 17, lines 9-12, 46-49; col. 19, lines 8-11).

Cluts also teaches that users may obtain desirable services or programming at a time and date specified by the user (col. 1, lines 36-40) but it does not teach a criteria set including a time period that refers to a duration of the collection of media content. However, PC Magazine discloses a software jukebox that can be downloaded from MusicMatch. As the user collection grows, MusicMatch offers playback flexibility via its Auto DJ function, which lets users set a playback duration and select songs by up to three general classes, such as artist, tempo, genre, mood, or situation (page 1, last paragraph). Therefore, it would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify Cluts's method for selecting music to include a criteria set including a time period because the user is enabled to define not only what type of media content should be collected but also specific segments and stipulate the duration of the transmission or collection of the media content so that only what is of his interest will be downloaded, streamed, played, or stored.

Claims 2, 8, and 17:

Cluts teaches an audio file as media content (abstract; col. 4, lines 38-67).

Claims 3, 9, 18, and 23:

PCMagazine teaches MusicMatch (software jukebox), which includes media content (audio file) in an MP3 format (page 1).

Claims 4, 10, and 16:

Cluts teaches an input device for receiving input from the user (col. 3, lines 3-8).

Claim 14:

Cluts teaches multiple servers and storage mediums (col. 3, lines 1-17; col. 5, lines 1-18; col. 6, lines 38-65; col. 7, lines 14-18).

Claim 15:

Cluts teaches identifying means such as a tag and id (song id, artist id, etc.) that represent (uniquely identify) attributes of a piece of media content (col. 11, lines 34-46; col. 14, lines 1-11; col. 15, lines 14-25).

Claim 19:

Cluts teaches means for playing media content (fig. 1, 2; col. 6, lines 21-65).

Claim 20:

Cluts teaches a remote media content player (fig. 1, 2; col. 6, lines 21-65).

Claims 21 and 22:

See claims 1 and 20. Cluts teaches that the user can rate a piece of media

content (col. 2, lines 30-48; col. 3, lines 1-36; col. 11, lines 34-48; col. 13, lines 63-67; col. 14, lines 1-11; col. 15, lines 14-31, 47-55).

**8. Claims 5, 6, 11, 12, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts/PCMagazine* and *R. W. Picard* (article entitled Affective Wearables, published in 1997).**

Claims 5, 11, and 25:

Cluts/PCMagazine does not teach a physiological input including at least one of heart rate and motion detection. However, Picard discloses a wearable system (affective wearable) that enables recognition of its wearer's affective patterns (abstract). Picard teaches that a wearable computer can learn to recognize physical and physiological patterns, especially those, which correspond to affective states (fear, stress, relax). Picard teaches that the system monitors heart rate, blood pressure, etc., (page 90, left and right column). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cluts's interactive network to include Picard's teaching of a criteria set including a physiological input because as Picard says, the system gathers important information about the wearer that may be used in affect analysis.

Claims 6, 12, 24, and 27:

Cluts does not teach a schedule input that is an activity planned and

documented on a scheduling system. However, Picard teaches an affective assistant agent that can intelligently filter the user's schedule, taking into account the user's emotional state or degree of activity (page 91, right column, second paragraph). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to modify Cluts's invention to include Picard's teaching of schedule input because the system plans activities based on the wearer's emotional or physical state.

Claim 26:

See claims 5 and 6. Picard teaches that the wearable system sets the criteria by analyzing affective states, environment, wearer's position, viewpoint, etc. (page 90, left and right column; page 91, left column-second paragraph; page 91, right column-first paragraph).

***Conclusion***

9. The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach a method for collecting media content based upon criteria including user-defined classification and time (Holtz: c.3, l. 51-61; c.4, l. 29-30; c. 31, l. 57-67; c. 21, l. 1-12; c. 34, l. 21-24; c. 35, l. 3-8;



Montie: p. 5, l. 26-34; p. 6, l. 1-14).

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

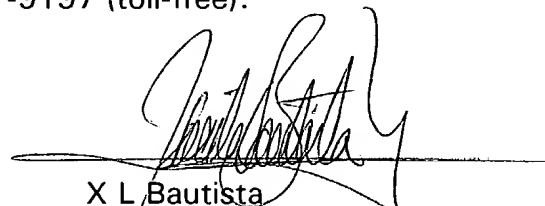
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to X L Bautista whose telephone number is (703) 305-3921. The examiner can normally be reached on Monday-Thursday (8:00-18:00), Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (703) 308-5186. The

fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



X L Bautista  
Patent Examiner  
Art Unit 2179

xlb  
20 July 2004